

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
PostNL – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-4

NOTICE AND ORDER CONCERNING TYPE 2 RATE ADJUSTMENT AND
ROYAL POSTNL BV NEGOTIATED SERVICE AGREEMENT

(Issued November 20, 2012)

I. INTRODUCTION

Background. On November 15, 2012, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing a Type 2 rate adjustment in conjunction with a new negotiated service agreement.¹ The Notice concerns the inbound portion of a bilateral agreement with Royal PostNL BV (PostNL) (Agreement), which the Postal

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2012 (Notice).

Service seeks to include within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators (Docket Nos. MC2010-35, R2010-5 and R2010-6) product. Notice at 1.

Rates under the Agreement are intended to take effect January 1, 2013 following expiration of rates in the existing TNT Agreement. *Id.* at 3.

Contract history. The Agreement is a successor to the TNT Agreement, which was added by operation of Order No. 549 in Docket Nos. MC2010-35, R2010-5, and R2010-6. Both the instant Agreement and the TNT Agreement are with the postal operator of the Netherlands, however, the Postal Service's contracting partner in the TNT Agreement was TNT Post, a subsidiary of the postal operator for the Netherlands, while the instant Agreement is with PostNL, the current postal operator of the Netherlands. *Id.* at 10.

Applicable rules. 39 CFR 3010 subpart D addresses rate adjustments for negotiated service agreements (Type 2 rate adjustments). The rules in this subpart specify, among other things, the scope and nature of the data, information, and explanations the Postal Service is to provide in a notice of Type 2 rate adjustment; the action the Commission is to take upon receipt of such Notice; and the nature of Commission review. See 39 CFR 3010.42 through 3010.44.

II. NOTICE OF FILING

Compliance with filing requirements. The Postal Service's filing consists of the Notice, two attachments, and a public Excel file. Attachment 1 is an application for non—public treatment of material filed under seal with the Commission (Application).² This material consists of the unredacted text of the Agreement and unredacted supporting financial documentation. *Id.* at 2. Attachment 2 is a redacted copy of the Agreement. The public Excel file is a redacted version of the supporting financial documentation. *Id.*

² The Application was filed pursuant to 39 CFR 3007.21. See Notice at 12.

The Postal Service identifies January 1, 2013 as the effective date; asserts that the requisite 45 days' advance notice is being provided; and identifies a Postal Service official as a contact for further information. *Id.* at 3. It identifies the parties to the Agreement as the United States Postal Service and PostNL, the postal operator for the Netherlands. *Id.* at 4. It states that the Agreement includes inbound Letter Post in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post.

The Postal Service states that workpapers filed with the Commission under seal provide information about expected financial improvements, costs, volumes, and revenues. *Id.* It identifies three aspects of the Agreement expected to enhance performance: an anticipated revision to accounting business rules related to changes in settlement; encouragement of incentives for optional activities, such as sortation or separation changes; and identification of suggested Office of Exchange Routing Details and information about the Offices of Exchange for entry of Registered Mail. *Id.* at 4-5.

The Postal Service cites several reasons why the Agreement will not result in unreasonable harm to the marketplace. These include, among others, PostNL's dominant position in the market for Letter Post originating in its home country; Private Express Statutes (in the United States) that generally prohibit entities other than the Postal Service from carrying inbound international letters commercially after entry at a United States port, at least below certain price and weight thresholds; and the parties' status as their respective countries' designated operators for the exchange of mail, including Letter Post, under rules set by the Universal Postal Union. *Id.* at 5-6.

Rule 3010.43 — data collection plan. Rule 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection for the Agreement, the Postal Service states that it intends to provide information via the Annual Compliance Report and, pursuant to this alternative, to provide any necessary information about mail flows from PostNL in the course of the annual review process. *Id.* at 7. The Postal Service further asks that the Commission except the Agreement from the separate performance reporting requirement under 39 CFR 3055.3(a)(3) on

grounds that the Agreement covers “merely a grouping of other products already being measured.” *Id.* It notes that the Commission has granted such exceptions for similar agreements.³

Consistency with applicable statutory criteria. The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria: whether the agreement (1) improves the Postal Service’s net financial position or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly-situated mailers. *Id.* at 8 (citing 39 U.S.C. 3622(c)(10)). The Postal Service asserts that it addresses the first two criteria in its Notice and that the third is inapplicable, as there are no entities similarly situated to PostNL in terms of their ability to tender broad-based Letter Post flows from the Netherlands. *Id.*

Functional equivalency. The Postal Service asserts that the Agreement is functionally equivalent to the China Post 2010 Agreement, TNT Agreement, Hongkong Post 2011 Agreement, and China Post 2011 Agreement because its terms fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. *Id.* at 8-9. It therefore asserts that the Agreement and the four other referenced agreements conform to a common description. *Id.* at 9. The Postal Service also asserts that all five agreements are constructed from a similar template; contain many similar terms and conditions; provide rates for Letter Post tendered to the Postal Service from each foreign operator’s territory, along with ancillary services to accompany inbound Letter Post; involve a foreign postal operator; and provide comparable benefits. *Id.* It therefore claims that because the agreements incorporate the same attributes and methodology, the relevant characteristics are similar, if not the same. *Id.*

The Postal Service acknowledges the existence of differences that distinguish the Agreement from previous agreements; uses the TNT Agreement

³ The Postal Service cites exceptions granted for the China Post 2010 Agreement, the TNT Agreement, the Hongkong Post 2011 Agreement, and the China Post 2011 Agreement. *Id.*

as a basis for comparison for identifying new and revised elements; and briefly describes the nature of the changes.⁴ *Id.* at 9-11. However, it asserts that the Agreement is nevertheless functionally equivalent to the previously-approved agreements, and that the differences do not affect either the fundamental service being offered or the fundamental structure of the contracts. *Id.* at 11-12.

Additional matter—blanket performance reporting exception for future contracts. In addition to seeking an exception from the separate performance reporting requirements in rule 3055.3(a)(3) for this Agreement, the Postal Service also asks that the Commission approve a blanket exception for such reporting for all contracts added to the MCS as Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators on grounds that the performance of the products covered by those agreements is already included in the measurement of other products. *Id.* at 12.

III. NOTICE OF PROCEEDING

The Commission, in conformance with rule 3010.44, hereby establishes Docket No. R2013-4 to consider issues raised by the Notice. The Commission invites public comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. The Commission also invites comments on the Postal Service's request for a blanket exception from performance reporting requirements in 39 CFR 3055.3(a)(3) for all future contracts added to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Docket Nos. MC2010-35, R2010-5, and R2010-6) product.

⁴ In addition to the difference in the identity of the Postal Service's contracting partner in this Agreement, affected elements of the Agreement include Articles 1, 3, 8 through 10, 12, 14, and 22 through 24; the signatories; and Annexes 1 through 3. Changes include, for example, inclusion of addresses for the Postal Service and PostNL; the period the Agreement will remain in effect; and rates. Article 8 is new. Subsequent articles have been renumbered.

Comments are due no later than November 29, 2012.⁵

The public portions of the Postal Service's filing have been posted on the Commission's website. They can be accessed at <http://www.prc.gov>. Information on how to obtain access to non-public material is available at 39 CFR 3007.40.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2013-4 to consider matters raised by the Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, filed November 15, 2012.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

⁵ To provide sufficient time for interested persons to comment in these proceedings, the Commission finds it appropriate to modify the 10-day comment period specified in 39 CFR 3010.44(a)(5). The modest extension will not prejudice either party to the agreement, given that 45 days' advance notice is provided in Type 2 rate adjustments.

3. Comments by interested persons in this proceeding are due no later than November 29, 2012.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary